

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7 OAKLAND DIVISION
8

9 VICKIE AARON, et al.,

10 Plaintiffs,

11 vs.

12 McKESSON CORPORATION,
13 a corporation, et al.,

14 Defendants.

Case No: C 13-03054 SBA

ORDER

Docket 11, 13

15 WILLIE ALLEN, et al.,

16 Plaintiffs,

17 vs.

18 McKESSON CORPORATION,
19 a corporation, et al.,

20 Defendants.

Case No: C 13-03066 SBA

ORDER

Docket 11, 13

21
22 ELIZABETH PACHECHO, et al.,

23 Plaintiffs,

24 vs.

25 McKESSON CORPORATION,
26 a corporation, et al.,

27 Defendants.
28

Case No: C 13-03107 SBA

ORDER

Docket 11, 12

1 The parties are presently before the Court on Defendant SmithKline Beecham
2 Corporation d/b/a GlaxoSmithKline's ("GSK") Motions to Stay All Proceedings Pending
3 Transfer by the Judicial Panel on Multidistrict Litigation ("JPML") to MDL 1871 and
4 Plaintiffs' Motions to Remand for Lack of Federal Subject Matter Jurisdiction which have
5 been filed in each of the above actions.¹ Having read and considered the papers filed in
6 connection with these matters, and being fully informed, the Court hereby GRANTS GSK's
7 motions to stay, and DENIES Plaintiffs' motions to remand without prejudice.²

8 **I. BACKGROUND**

9 Plaintiffs commenced the instant products liability actions in the Superior Court of
10 California, County of San Francisco, alleging that they sustained personal injuries arising
11 from the use of Avandia®, a prescription diabetes medication. GSK timely removed the
12 actions to this Court based on diversity jurisdiction, asserting that Plaintiffs fraudulently
13 joined McKesson Corporation ("McKesson"), a non-diverse party, as a defendant. GSK
14 also alleges removal jurisdiction based on the Class Action Fairness Act. Id.

15 A Multidistrict Litigation proceeding ("MDL") has been established in the Eastern
16 District of Pennsylvania entitled In re Avandia® Marketing, Sales Practices, and Products
17 Liability Litigation (MDL-1871), to coordinate all product liability cases involving
18 Avandia®. GSK anticipates that the JPML will soon issue a Conditional Transfer Order
19 which will conditionally transfer these cases the Avandia® MDL and now moves to stay
20 the actions pending transfer. Plaintiffs oppose the motions to stay and have filed motions to
21 remand the action to state court.

22 //

23
24
25
26 ¹ The parties are represented by the same counsel and have filed essentially identical
27 motions in each of these cases.

28 ² The Court, in its discretion, finds this matter suitable for resolution without oral
argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

1 II. DISCUSSION

2 Federal district courts have the power to stay ongoing proceedings “incidental to the
3 power inherent in every court to control the disposition of the causes on its docket with
4 economy of time and effort for itself, for counsel, and for litigants.” Landis v. N. Am. Co.,
5 299 U.S. 248, 254 (1936). In determining whether a stay is warranted pending transfer by
6 the JPML, courts consider the following factors: “(1) potential prejudice to the non-moving
7 party; (2) hardship and inequity to the moving party if the action is not stayed; and (3) the
8 judicial resources that would be saved by avoiding duplicative litigation if the cases are in
9 fact consolidated.” Couture v. Hoffman-La Roche, Inc., No. C 12-2657 PJH, 2012 WL
10 3042994, *2 (N.D. Cal. July 25, 2012).

11 Balancing the salient factors set forth above, the Court finds that a stay is warranted.
12 As a threshold matter, Plaintiffs will suffer minimal prejudice. The JPML is scheduled to
13 hear the parties’ arguments as to transfer to the MDL shortly.³ In the event the JPML
14 declines to transfer the actions, Plaintiffs may renew their motions to remand in this Court.
15 Alternatively, if the JPML transfers the cases, Plaintiffs will have the opportunity to present
16 their motions to remand in the Avandia® MDL.

17 As to the remaining considerations germane to stay request, the Court finds that,
18 staying the action will avoid inequity and hardship to GSK, while simultaneously
19 promoting judicial economy. The matter of McKesson’s allegedly fraudulent joinder is
20 common to other cases in the Avandia® MDL. Permitting that Court to resolve the issue of
21 fraudulent joinder globally, as opposed to adjudicating the issue prior to transfer, promotes
22 judicial consistency and avoids conflicting judgments. See Tucker v. Organon, No. C 13-
23 00728 SBA, 2013 WL 2255884, at *2 (N.D. Cal. May 22, 2013) (granting motion to stay
24
25
26

27
28 ³ On September 26, 2013, the JPML will conduct a hearing on whether these and
other cases should be transferred to the Avandia® MDL.

1 pending transfer to MDL products liability proceedings and denying motion to remand
2 without prejudice).⁴

3 **III. CONCLUSION**

4 For the reasons stated above,

5 IT IS HEREBY ORDERED THAT:

6 1. The above-captioned actions are STAYED until the JMPL resolves the matter
7 of whether these actions should be transferred to the Avandia® MDL. The parties shall
8 inform the Court within seven (7) days from the date the transfer issue is resolved.

9 2. Plaintiffs' motions to remand are DENIED without prejudice to renewal in
10 the event the actions are not transferred to the Avandia® MDL

11 3. All pending docket matters shall be terminated.

12 IT IS SO ORDERED.

13 Dated: September 26, 2013


SAUNDRA BROWN ARMSTRONG
United States District Judge

14
15
16
17
18
19
20
21
22
23
24 ⁴ The Court's ruling is consistent with the decisions of other judges of this Court.
25 See Brock v. McKesson Corp., No. C 13-3149 SI (N.D. Cal. Aug. 16, 2013) (Ilston, J.);
26 Parks v. McKesson Corp., No. C 13-3162 SC (N.D. Cal. Aug. 16, 2013) (Conti, J.);
27 Ackerman v. McKesson Corp., No. C 13-3049 MMC (N.D. Cal. Aug. 12, 2013) (Chesney,
28 J.); Butler v. McKesson Corp., No. C 13-3154 JW (N.D. Cal. Aug. 12, 2013) (White, J.);
West v. McKesson Corp., No. C 13-3109 PJH (N.D. Cal. Aug. 12, 2013) (Hamilton, J.);
Flores v. McKesson Corp., No. C 13-3153 JST (N.D. Cal. Aug. 2, 2013) (Tigar, J.);
Alvarez v. McKesson Corp., No. C 13-3112 TEH (N.D. Cal. July 24, 2013) (Henderson,
J.); but see Hermosillo v. McKesson Corp., No. C 13-3169 WHA (N.D. Cal. Aug. 14,
2013) (Alsup, J.).